IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2328 OF 2006

Bharat Parikh ...Applicant

vs.

Central Bureau of Investigation & Anr. ...Respondents

Mr.Amit Desai, Sr.Adv. i/b Mr.Prakash Naik for the Applicant
Mr.R.F.Lambay for Respondent No.1
Ms S.V.Gajare,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 21,2006.

P.C.:

1. The submissions of the learned Counsel appearing for the parties were heard on the last date. By this Application under section 482 of the Code of Criminal Procedure, 1973 (herein after referred to as the said Code), the Applicant has prayed for quashing the proceeding of a Special Case pending before the learned Special Judge, Mumbai and for quashing the order dated 1st April 2006 rejecting the application for discharge made by the Petitioner. It will be necessary briefly refer to the facts of the case for the purpose of appreciating the submissions which are made by the learned Counsel for the Applicant.

2. The Applicant is the original accused No.5 in the pending Special Case. The Applicant is charged with offence under sections 120-B read with sections 420, 468, 471, 477-A of the Indian Penal Code and section 13(2) read with section 13(1) (d) of Prevention of Corruption Act, 1988. Charge was framed

against the Applicant and other accused persons on 13th December 1996. After framing the charge, an application was made in the year 2001 by the Applicant herein before the Special Court seeking direction for production of certain documents. By order dated 27th August 2001, the said application was allowed and the prosecution was directed to produce before the Special Court all the documents referred to in the statement dated 24th February 1993 of one Mr.P.K.R.K.Menon. Thereafter, an application for discharge was filed by the applicant which came to be rejected by order dated 1st April 2006.

3. Shri Desai, learned Counsel appearing for the Applicant submitted that there was non-compliance on the part of the prosecution of mandatory requirement of section 207 read with section 238 of the said Code. He submitted that the learned Trial Judge was duty bound to satisfy him that compliance was made with the provisions of section 207 of the said Code by furnishing all the requisite documents. He submitted that the statement of Shri Menon recorded on 24th February 1993 was supplied to the Applicant. However, the documents which were referred to in the said statement were not supplied. He submitted that the order dated 27th August 2001 passed by the learned Special Judge directing production of all documents itself shows that there was non-compliance with the requirement of section 238 read with section 207 of the said Code. He submitted that in view of the said non-compliance, the entire proceedings of the case are vitiated. He submitted

that all the documents including the documents which were ordered to be produced by the learned Special Judge under the order dated 27th August 2001 should have been considered by the trial court as required by section 239 of the said Code for the purpose of framing the charge. He submitted that if the documents which are produced on the basis of order passed on 27th August 2001 would have been earlier produced before the Trial Court, charge could not have been framed against the Applicant. He submitted that the applicant has thus suffered prejudice. He submitted that the application for discharge has been rejected in view of the decision of the Apex Court in case of Ratilal Bhanji Mithani Vs. State of Maharashtra and others (A.I.R.1979 S.C. page 94). He submitted that if this court is of the view that the entire proceedings of the Special Case are not vitiated, order framing charge may be set aside and the case may be directed to proceed from the stage of framing of the charge.

4. I have considered the submissions. Perusal of the order passed by the learned Special Judge on 1st April 2006 indicates that the learned Judge relied upon the decision of the Apex court in case of Ratilal Bhanji (supra) and held that after framing of the charge the case will have to be taken to its logical end and he has no inherent power to recall the order of framing charge. The learned Special Judge also considered the submissions of the Applicant on the basis of the judgment of the Apex court in case of State of Andhra Pradesh Vs. Goloconda Linga Swamy and another (A.I.R. 2004

S.C. page 3967).

5. It will be necessary at this stage to refer to the decision of the Apex court in case of Ratilal Bhanji (supra). In paragraph 26A of the said decision, the Apex court held thus:

> "26A.Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973)."

6. The Apex court held that once a charge is framed the learned Magistrate has no power under the provisions of the said Code to cancel the charge and revert the proceeding to the earlier stage and to discharge the accused. Considering

the legal position as reflected from the decision in case of Ratilal Bhanji (supra), no fault can be found with the view taken by the learned Special Judge while rejecting the application for discharge.

7. The submission of Shri Desai appearing for the Applicant is that the entire proceedings have been vitiated for non-compliance with section 207 of the said Code. He has placed reliance on the order passed by the Special Judge on 27th August 2001 by which he directed the production of all the documents which are referred to in the statement dated 24th February 1993 of Shri P.K.R.K. Menon. He submitted that the said documents which are produced on the basis of the order clearly show that there was a genuine trade transaction between M/s.Western Ministil Ltd. and M/s.Vergo Steels Ltd.

8. It is not possible to accept the submissions of Shri Desai that on account of failure to produce the said documents, the entire proceedings of the case from the stage of framing of charge are vitiated. There was substantial compliance made with the requirement of law by the prosecution. Failure to produce the documents which are referred to in order dated 27th August 2001 will not nullify the proceedings from the stage of framing of the charge. It is not possible to accede to the submission as every illegality does not have result of vitiating the proceedings of the case.

9. Now, the charge has been framed and the case will go for

trial as held by the Apex Court in case of Ratilal Bhanji (supra). I find that no case is made out for exercising jurisdiction under section 482 of the said Code at this stage.

Hence, Application is rejected.

10. It is made clear that nothing mentioned in this order shall be treated as expression of any opinion as regards merits of the prosecution case.

JUDGE